

EDWARD H. COLTHARP
DALE F. KILLIAN

IBLA 81-523

Decided October 6, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring oil and gas lease U-1181 terminated as of the expiration date of its primary term.

Affirmed.

1. Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination --Oil and Gas Leases: Well Capable of Production

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessees that there was such production or a well capable of such production.

2. Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination --Oil and Gas Leases: Well Capable of Production

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing

production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

3. Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination --Oil and Gas Leases: Well Capable of Production

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

APPEARANCES: George H. Speciale, Esq., Salt Lake City, Utah, for appellants:

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On March 3, 1981, the Utah State Office, Bureau of Land Management (BLM), issued a decision holding that oil and gas lease U-1181 had terminated on October 31, 1976, the expiration date of its primary term. This lease was issued to M. Untermeyer for a period of 10 years effective November 1, 1966, 1/ and, effective August 1, 1967, was assigned to Tenneco Oil Company (Tenneco), which commenced drilling in September 1967. The record shows that Tenneco completed a producing oil well in SW 1/4 NW 1/4 sec. 27 in December 1967 and that this part of the lease was communitized along with remaining lands in NW 1/4 sec. 27 as part of the Green River formation on April 19, 1968, in communitization agreement NW-217. Production apparently ceased sometime prior to June 29, 1970, as the record shows that the communitization agreement terminated on this date.

In October 1970, Tenneco, the record title holder, relinquished lease U 1181 as to all land except SW 1/4 NW 1/4 of sec. 27, the 40 acres on which the well was situated, and BLM accepted the relinquishment as of October 12, 1970, by decision of December 28, 1970. The retained leasehold interest was assigned several times, penultimately to Shawnee Oil Development Company (Shawnee), and finally to Dale F. Killian and Edward H. Coltharp effective June 1, 1973, each having 50 percent of record title. Killian and Coltharp are the present lessees of record.

On November 9, 1976, the District Engineer, Conservation Division, Geological Survey (GS), Salt Lake City, Utah, wrote Killian, advising him that the lease had been issued for a period of 10 years

1/ The lease included 1,642.33 acres described as NE 1/4 NE 1/4 and S 1/2 NE 1/4 sec. 19; NW 1/4 sec. 20; SW 1/4 and SW 1/4 SE 1/4 sec. 21; SW 1/4 NW 1/4 and S 1/2 sec. 27; N 1/2 and SE 1/4 sec. 28; and lots 3 and 4, NW 1/4, and N 1/2 SW 1/4 sec. 35, T. 5 S, R. 20. E., Salt Lake meridian.

"and so long thereafter as there is production in paying quantities." GS noted that the lease had been unproductive for a long period but that lessees had begun an effort to reestablish production in paying quantities in late October 1976. However, GS also alluded to an inspection of operations on the lease premises on November 1, 1976, which indicated that the well there was "not pumping" at that time and that what oil had been produced was mixed with "a considerable amount of water." The letter notes "later information" showing that 300 barrels of water were produced per day, as against only 20 barrels of oil per day.

Accordingly, GS advised Killian that it was giving him notice under 43 CFR 3107.3-2 2/ to place the well in a producing status within 60 days. GS directed him to establish to its satisfaction that he had established production in paying quantities and stated that the lease would not be extended beyond its primary term ending on October 31, 1976, if he did not do so. 3/ A copy of this letter was provided to Coltharp, the colessee. The record is silent as to any response by either Killian or Coltharp.

The next item in the record is a letter dated April 11, 1980, from GS to Shawnee, which had once been a mesne record title holder of this lease. This letter repeated the 60-day notice, per 43 CFR 3107.3-2, to put the well into production. However, since Shawnee had transferred all of its interests in this lease to Killian and Coltharp in 1973, it is evident that GS misaddressed this letter.

2/ This section provides:

"No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Area Oil and Gas Supervisor to do so: [emphasis added] Provided, That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the Act."

3/ Apparently, in November 1976, GS viewed the lease in question as possibly having a well capable of producing oil or gas in paying quantities, probably because there was a well there which had produced as late as June 1970 and because lessees were bringing drilling equipment to the well site. Accordingly, GS correctly notified appellants at this time by certified mail to prove within 60 days that they had brought this well into production of oil or gas in paying quantities, as required by 43 CR 3107.3-2, and, by so doing, reasonably put the burden on lessees to show that they were entitled to hold their lease "by production." The use of this procedure by GS did not constitute a finding that there was a well on the lease which was capable of production. Rather, GS gave this notice on the chance that there was such a well, in order to give appellants notice to put the well into production.

On March 3, 1981, BLM issued a decision declaring that the lease had expired on October 31, 1976, because it had reached the end of its primary term and there was no well on the lease at that time capable of producing oil or gas in paying quantities. Killian and Coltharp have appealed.

[1] A noncompetitive oil and gas lease has a primary term of 10 years and so long thereafter as oil and gas is produced in paying quantities. 30 U.S.C. § 226(e) (1976); 43 CFR 3101.1-1; Coseka Resources (U.S.A.), Ltd., 56 IBLA 19 (1981); Coronado Oil Co., 42 IBLA 235 (1979); Jones-O'Brien (Secretarial Decision), 85 I.D. 89 (1978); Manhattan Resources, Inc., 34 IBLA 346 (1978); Rajac Industries, Inc., 26 IBLA 202 (1976). However, even in the absence of actual production, the lease will not expire at the end of this term if there is on it a well capable of producing oil or gas in paying quantities, unless the lessee has failed to put the well into producing status after having been given not less than 60 days to do so. 30 U.S.C. § 226(f) (1976); 43 CFR 3107.3-2; Energy Trading, Inc., 50 IBLA 9 (1980); Coronado Oil Co., *supra*; American Resources Management Corp., 40 IBLA 195 (1979); Arlyne Lansdale, 16 IBLA 42 (1974); Juniper Oil and Mining Co., A-30181 (Dec. 4, 1964); Gwen Gaukel, A-29139 (Feb. 6, 1963).

Thus, the first question is whether there was actual production of oil or gas in paying quantities on the lease. GS's letter of November 6, 1976, alludes to an inspection of the well site on November 1, 1976, which showed only intermittent pumping of small amounts of oil mixed with large amounts of water. This strongly suggests the this well was not producing oil in paying quantities, and since appellants do not allege to the contrary, we so find.

We must also consider whether the well was "capable of production of oil and gas in paying quantities" on the expiration date of the lease, in order to determine whether the 60-day minimum notice had to be given under 30 U.S.C. § 226(f) (1976). A well "capable of production in paying quantities" must be in condition to produce at the particular time in question. Arlyne Lansdale, *supra*. While actual production is not necessary, there must be a well with actual established physical capability, rather than more potential capability, to produce oil and gas in paying quantities. American Resources Management, *supra* at 200; Arlyne Lansdale, *supra*; see Polumbus Corp., 22 IBLA 270 (1975). Again, GS's letter of November 6, 1976, describes a well with, at best, marginal capacity to produce oil of limited value, in view of the necessity of separation of water, and, since appellants have not shown to the contrary, we find that there was no well capable of production.

[2] Since there was no well capable of production on the expiration date of the lease, and no actual production, the lease would have terminated automatically even in the absence of the 60-day notice to produce given by GS to appellants on November 6, 1976. American Resources Management Corp., *supra* at 202; Juniper Oil and Mining Co.,

supra. However, even assuming, arguendo, that there was a well capable of production, the lease terminated automatically on October 31, 1976, as a result of appellants' failure to put the well into producing status within 60 days of their receipt of GS's November 6 notice to do so. 43 CFR 3107.3-2.

Appellants do not allege that they complied with this notice, stating only that evidence of a well capable of producing oil or gas in paying quantities was delivered to BLM on February 22, 1978. The record contains no such evidence. In any event, such filing could not resuscitate the lease, which, even affording appellants the benefit of the substantial doubt about the well's capability to produce oil in paying quantities, terminated in 1976 when appellants failed to comply with the statutory directive to put the well in a producing status.

[3] Similarly, GS's issuance of a 60-day notice to Shawnee in April 1980 could not give life to this lease. Where a lease has automatically terminated due to cessation or production, issuance by GS of a new 60-day notice 3-1/2 years after termination, which notice purports to give lessees 60 days to establish production, does not renew the lease. R. E. Hibbert, 8 IBLA 379 (1972).

GS accountants, pursuant to a telephone inquiry by us, have indicated that lessees have paid minimum royalties on this lease through the present. Such payments also do not extend the lease, which, we have held, terminated on October 31, 1976. However, if this information is correct, BLM should take steps to refund any royalty collected on the lease after October 31, 1976.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette

Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

